



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/797,640

03/10/2004

D. Ryan Breese

88-2071A

4212

24114 7590 06/01/2007
LYONDELL CHEMICAL COMPANY
3801 WEST CHESTER PIKE
NEWTOWN SQUARE, PA 19073

EXAMINER

WOLLSCHLAGER, JEFFREY MICHAEL

ART UNIT

PAPER NUMBER

1732

MAIL DATE

DELIVERY MODE

06/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/797,640	Applicant(s) BREESE, D. RYAN	
	Examiner Jeff Wollschlager	Art Unit 1732	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 19 April 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed April 19, 2007 have been fully considered, but they are not persuasive.

Applicant's arguments appear to be on the following grounds:

1. Farley employs a polymer blend (VLDPE/HDPE) in their multilayer film and do not teach a multilayer film with a layer of LLDPE and at least one layer of HDPE or MDPE
2. Farley does not teach machine direction orientation, a post treatment of the multilayer film after the multilayer film is manufactured.
3. Since Farley does not teach machine direction orientation nor use the same materials he cannot achieve the same physical properties or effects.

The arguments are not persuasive for the following reason:

1. The examiner notes that Farley discloses a variety of multilayer combinations that meet the claimed multilayer limitation as set forth in the Final rejection. The examiner further notes that the claim does not exclude blends of material to form bimodal compositions. The disclosure and the claims suggest the density of the polyethylene is the important criteria. Further, Sample 1, Table 2, provides a multilayer film with one layer of polyethylene having a density of 0.912 g/cm³ (a LLDPE according to the instant disclosure) and one layer of polyethylene having a density of 0.965 (a HDPE according to the instant disclosure) which also clearly meets the claimed limitation.

Art Unit: 1732

2. The examiner notes that the argument appears to import limitations from the specification into the claims. The argument appears to suggest and imply that the starting film upon which the process is performed has already been stretched once to form an intermediate product. The suggestion in the argument is that the claim is directed to an additional stretching step to further stretch a previously stretched product. Further the suggestion is that the film has been cooled in between stretching steps to ambient temperature and is then reheated to perform this final stretching step. These suggestions and limitations are not commensurate in scope with the claim as currently presented.

The examiner notes that the definition of the terms MDO ["The multilayer film is uniaxially stretched in the machine (or processing) direction. This is so called MDO."] and draw down ratio ["The ratio of the film thickness before and after orientation is called "draw-down ratio"."] in the disclosure do not preclude the examiner's interpretation. In fact, the examiner's interpretation is very reasonably based on these definitions since the draw down at a ratio of 21:1 employed by Farley reduces the thickness of the film after it is extruded/manufactured and necessarily imparts a degree of orientation to the film.

The examiner notes that the instant disclosure, in view of applicant's argument, appears to have support to overcome the applied reference. The examiner suggests that an amendment to the claims is necessary to clarify the scope of the invention and to overcome the applied reference. Such an amendment would require further search.

Art Unit: 1732

3. As set forth above, Farley employs the same claimed materials and the same claimed MDO process. As such, the same physical properties and effects are necessarily realized.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff Wollschlager whose telephone number is 571-272-8937. The examiner can normally be reached on Monday - Thursday 7:00 - 4:45, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on 571-272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/797,640


Page 5

Art Unit: 1732

JW

Jeff Wollschlager
Examiner
Art Unit 1732

May 25, 2007


CHRISTINA JOHNSON
SUPERVISORY PATENT EXAMINER
5/25/07